



**NEBRASKA GROCERY INDUSTRY ASSOCIATION, INC.**

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April 7, 2003

The Honorable Ann Veneman  
Secretary, U.S. Department of Agriculture  
Country of Origin Labeling Program  
Agricultural Marketing Service  
Stop 0249 Room 2092-S  
1400 Independence Avenue, SW  
Washington, DC 20250-0249

**Re: Comments on Guidelines for Voluntary Country of Origin Labeling Program**

Dear Secretary Veneman:

I am writing to you on behalf of the membership of the Nebraska Grocery Industry Association (NGIA). Our organization represents grocery store owners and operators across the State of Nebraska. I am pleased to respond to your request for comments on the U.S. Department of Agriculture's (USDA's) "Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts" (hereinafter Voluntary COL Guidelines).

While we understand that you are responding to the Congressional mandate to provide Voluntary COL Guidelines, we believe that the program is fundamentally flawed. This is not an issue about food safety but rather an issue of who pays for marketing programs that promote specific products. If this were truly an issue of food safety the food served in restaurants would be included. In addition, turkey and chicken would be included in the types of products that are included.

Grocers in Nebraska have a long history of supporting voluntary country of origin labeling programs. For example, Blue Ribbon Beef, Nebraska Beef, Corn-Fed Beef and Black Angus Beef are all types of marketing plans that promote beef that is raised in the Midwest. Our Association worked with our Nebraska Department of Agriculture in developing the very first Nebraska Beef program.

As you develop the proposed and final regulations, we urge you to consider the following issues:

- Clear recognition of overall food chain responsibilities:

The law requires retailers to provide consumers with information that retailers can only obtain from their suppliers. Given this fact, the law also holds suppliers accountable for providing information to retailers.

USDA's Voluntary COL Guidelines properly recognize that the entire food chain must bear responsibility for a country of origin labeling program if consumers are to receive accurate country of origin information as Congress defined it. In furtherance of this principle, the Voluntary COL Guidelines state that producers, growers, handlers, packers, processors and importers must maintain auditable records documenting the origin of covered commodities and that these persons must make country of origin information available to retailers. USDA's regulations must also recognize the obligations that these parties share and must further hold

them accountable through stringent enforcement measures to ensure that retailers have accurate information to provide to consumers.

- Flexible Methods of Country of Origin Notification:

The statute allows country of origin information to be provided by means of a “label, stamp, mark, placard or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers.” The Guidelines generally follow the statute and further provide that the information must be “conspicuous,” and either typed, printed or handwritten.

We urge the Secretary to maintain flexibility regarding the ways in which we satisfy our statutory obligation to inform consumers of the country of origin of covered commodities. Furthermore, USDA should expressly recognize that country of origin information can be considered “conspicuous” even if it is a label placed on the back of a random weight package. The country of origin declaration for hamburger as explained in the Voluntary COL Guidelines could cover a substantial amount of the product if it was required to appear on the front of the package with all of the other federally mandated labeling. (Some counties limit the amount of package surface that may be covered to avoid concealing products from consumers.) Accordingly, provided that the information is presented to consumers in a manner in which they can readily find it, the information should be considered conspicuous and our obligation met. Indeed, since the statute can be satisfied by providing a sign at the store, to the extent that the information is affixed any where on the package, it will be available to the consumer for a greater period of time.

- Reasonable recordkeeping:

The Voluntary COL Guidelines require every person engaged in the business of supplying a covered commodity for retail sale to keep records on the country of origin of the covered commodity for two years. Basic records must be kept at store level; contracts and other more detailed records may be kept at warehouses or corporate headquarters.

Retailers should not be required to keep two years worth of records for covered commodities. Most covered commodities will be sold and consumed well before two years has elapsed, thus retaining records for this period of time at the retail level will serve no useful purpose while incurring substantial cost.

Records required should be reasonable. Retailers have no control over the country of origin determination, which must be made well before the food product reaches the retail grocer’s control. Accordingly, the records retailers are required to keep must only connect the covered commodity to those who made the country of origin determination.

- Recognition of food service aspects of grocery stores:

In keeping with the current state of the industry, many stores include a variety of options for satisfying consumer demands. In addition to the customary grocery sections, such as produce, meat and general grocery, **stores** offer consumers prepared foods at delis, salad bars, through catering, and other venues.

The Guidelines state that the term “food service establishment” includes salad bars, delis and other prepared food enterprises that provide ready-to-eat foods that are consumed either on or outside of the retailer’s premises. We urge USDA to continue to recognize that foods provided from these venues within the retail store

are properly considered subject to the statute's exemption from country of origin labeling for food service establishments. Trays of cut vegetables from our catering operations, fruit salad sold at delis or throughout the store, and foods provided at our salad bars are all prepared at food service.

- Reasonable enforcement standards:

Retailers are subject to penalties of up to \$10,000 per "willful" violation of the statute. USDA's regulations should recognize this standard in two important respects.

First, USDA should recognize that if the majority of individual covered commodity items bear a label indicating the product's country of origin, the retailer has met the statute's requirement to inform the consumer of the country of origin of that covered commodity. For example, one efficient way to ensure that consumers receive accurate country of origin information on some covered commodities, such as produce, is for suppliers to sticker the individual items with country of origin information. However, given the nature of some items as well as adhesive efficacy, not all covered commodities will be stickered.

For example, suppliers currently apply one or two stickers to a hand of bananas that may be comprised of six or seven individual bananas. Consumers frequently separate individual bananas from the "hands" in which they were shipped so that not all hands will be labeled throughout the display, even if the supplier labeled each hand when they were shipped. Similarly, although the technology for label adhesives has improved, no label adhesive is effective 100% of the time. Therefore, USDA should recognize that, if the majority of covered commodity items on display bears country of origin labels, the retailer has met its obligation to inform the consumer of the country of origin of the covered commodity and has not willfully violated the statute, even if some covered commodities in the display do not bear a label.

Second, USDA should expressly recognize in the regulations and the preamble some circumstances under which retailers will not be considered to have violated the statute willfully. For example, USDA should state that the Agency will not conclude that a retailer has willfully violated the statute for providing inaccurate country of origin information for a covered commodity if the retailer has the results of an audit that the covered commodity supplier obtained from USDA (under the voluntary, user fee-based program proposed in the Voluntary COL Guidelines) or another third party that demonstrates that the supplier has a system for determining country of origin upon which the retailer may reasonably rely.

We are very concerned with the overall cost of this program. We believe that USDA has underestimated the cost burden of this program – a cost that will be placed directly on the backs of retailers and wholesalers. We believe that the estimated cost of the first year of the program (\$628 million for retailers and \$340 million for wholesalers) is too low.

We are especially concerned that the entire program is anti-small business. Independent retailers and wholesalers will face disproportionately higher compliance costs compared to their larger competitors.

We appreciate your attention to our concerns.

Sincerely,

*Kathy Siefken*

Kathy Siefken

Executive Director